IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2007

CORAM:

THE HON'BLE MR.JUSTICE ELIPE DHARMA RAO
&
THE HON'BLE MR.JUSTICE S.TAMILVANAN

W.P.NOS.38792 & 38793 OF 2003

G.Rajamoney ..Petitioner in W.P.38792/03

S.Durairaj ..Petitioner in W.P.38793/03

Vs.

1.The Registrar
Tamil Nadu Administrative Tribunal
Chennai - 104
2.The State of Tamil Nadu
represented by the Commissioner &
Secretary to Government
Home Department
Madras - 9
3.The Tamil Nadu Public Service Commission
represented by it's Secretary
Government Estate
Madras - 2
4.The Inspector General of Police
Madras - 4
5.The Commissioner of Police
Madras - 8 ..Respondents in W.P.38792/03

1.The Registrar
Tamil Nadu Administrative Tribunal
Chennai - 104
2.The State of Tamil Nadu
represented by the Commissioner &
Secretary to Government
Home Department
Madras - 9

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3.The Tamil Nadu Public Service Commission
represented by it's Secretary
Government Estate
Madras - 2

4.The Director General of Police
Mylapore
Madras - 4

5. S. NIJAMUDDIN
6. S. MURUGASAMY
7. M. MURUGESAN
8. A. NARAYANAN
9. R. SUBRAMANIAN
10. A. BALASUBRAMANIAM
11. K. MOHAN DORAISAMY
12. V. PALANI
13. MP SUDARAMOORTHY
14. C. ILANGO
15. T. KUMARASWAMY
16. C. RAJAMANICKAM
17. D. CHANDRABASU
18. I. NIZIR AHAMED
19. M. JOUN CHELLIAH
20. K. RAJARATHINAM
21. M. JAYABALU
22. S. GIRI MURUGAN
23. W. KALIAPPAN
24. P. MURALI
25. S. JAYAPANDIAN
26. MD.SHAJAHAN
27. C. VIVEKANANDAN
28. V. SITHANNAN
29. N. SWAMI DURAIVELU
30. R. BALASUBRAMANIAN
31. P. ILLANGOBAN
32. T. BALASUBRAMANIAN
33. R. CHANDRASEKARAN
34. R. SATHYAVELU
35. S. RAMAIAN
36 S. MURUGANANDAM
37. G. RAJENDRAN
38. R. ENUGOPAL
39. V. PANDI
40. A. CHANDRASEKARAN
41. K.N. SUDAKARAN
42. K. NAGARAJAN
43. V.G.PANNERSELVAM

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44. C. RAJENDRAN
45. G. KANNADASAN
46. V. PANNERSELVAN
47. A.K. DAYANIDHI
48. P. KRISHNAMOORTHY
49. L. MARCHTEN LEO
50. V. PANCHATCHARAM
51 T.N. VENKATESWARAN
52. N. KALYANASUNDARAN
53. G. BOOPATHI
54. N. KRISHNAVELU
55. P. RAMASAWAMY
56. K.C. NANDAKUMAR
57. V. RATHINASABAPATHY
58. S. MANICKAM
59. R. RAJAGOPALAN
60. P.R. KHADER MOHIDEEN
61. N.C. PALANISWAMY
62. P.R. GOPAL
63. M. SUESH KUMARA
64. K. SURIYAPRAKASH REDDY
65. N.R. JAYABALAN
66. N. JOHN BOSE
67. R. MUTHUSWAMY
68. V. RADHAKRISHNAN
69. A. BOSE.
70. M. MANICKAM
71 J. MOHAN RAJAGOP
72. G. DINAKARAN
73. M. GUNASEKARAN
74. T. AMIRTHA KUMARA
75. A. SELVARAJ Respondents in WP 38793/03

Prayer in W.P.No.38792/2003: Writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 12.12.2002 passed by the first respondent in T.A.No.110/1990 (W.P.No.10718/1986); to quash the same and consequently to direct respondents 2 to 4 to accord all service benefits like seniority, promotion, backwages and all other attendant service benefits to the petitioner by declaring that the proviso to Rule 25 of the Tamil Nadu Police Subordinate Service Rules as amended by G.O.Ms.No.767 Home (Police.III) dated 28.03.1985 as unconstitutional and void.

Prayer in W.P.No.38793/2003: Writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 12.12.2002 passed by the first respondent in T.A.No.75/1992 (W.P.No.9048/1987); to quash the same and consequently to direct respondents 2 to 4 to accord all service

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benefits like seniority, promotion, backwages and all other attendant service benefits to the petitioner by declaring that the proviso to Rule 25 of the Tamil Nadu Police Subordinate Service Rules as amended by G.O.Ms.No.767 Home (Pol.III) dated 28.03.1985 as unconstitutional and void.

For Petitioner in : Mr.M.Venkatachalapathy, SC for
both W.Ps. : Mr.M.Sriram
For Respondent 3: Mr.A.Arul
in both W.Ps. :
For RR2,4 & 5 in: Mr.K.Balakrishnan, AGP
W.P.38792/03 & :
R2 & R4 in :
W.P.38793/03

COMMON ORDER

(Order of the court was delivered by
Justice Elipe Dharma Rao)

These two writ petitions are directed against the common order dated 12.02.2002 passed by the Tamil Nadu Administrative Tribunal in T.A.Nos.110/1990 and 75/1992 respectively. The petitioner in each case was selected as Sub-Inspector of Police by direct recruitment in the year 1976. After selection, they underwent training in the Police Training College. Thereafter, each one of them were appointed as Sub-Inspector of Police in the Tamil Nadu State Police Subordinate Service. As per Rule 25 of the Special Rules of Tamil Nadu State Police Subordinate Service Rules as amended by G.O.Ms.No.3037, Home dated 25.08.1965, the seniority of the directly recruited Sub-Inspectors of Police was fixed according to the marks obtained by them in the Police Training College. As per the marks obtained, the petitioner in W.P.No.38792/2003 was assigned seniority No.17 and the petitioner in W.P.No.38793/2003 was assigned seniority No.13 by the Chief Officer. The said Rule was amended in the year 1985 by virtue of G.O.Ms.No.767 Home (Pol.III) dated 28.03.1985, under which a proviso was added viz.,

> "Provided further that in respect of direct recruitment made in the year 1976 and 1979 to the posts of Sub-Inspectors of Police and the Reserve Sub-Inspectors of Police by the Tamil Nadu Public Service Commission, the seniority shall be fixed with reference to the Rank assigned by the Tamil Nadu Public Service Commission in the list of selected candidates communicated by it."

Following the said Government Order, the seniority of the petitioners was re-fixed by assigning rank Nos.195 and 132 respectively and proceedings were issued communicating the same to the petitioners. The petitioners challenged the said proceedings originally by way of filing writ petitions, which were later on transferred to the Tamil Nadu State Administrative Tribunal consequent to the formation of the same and re-

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numbered as T.A.Nos.110/1990 and 75/1992 respectively. The Tribunal dismissed the transfer applications. Therefore, the petitioners are before this court in these two writ petitions challenging the common order passed by the Tribunal.

2. Learned senior counsel appearing for the petitioners has contended that the seniority of the petitioners, which was settled even in the year 1977, had been revised subsequent to the amendment made to section 25 of the Special Rules of Tamil Nadu State Police Subordinate Service Rules by virtue of G.O.Ms.No.767 Home (Pol.III) dated 28.03.1985, which has deprived the petitioners of their vested right of promotion and therefore the amendment cannot be given retrospective effect. Learned senior counsel also contended that the Tribunal, without adverting to the above materials available on record, had erroneously dismissed the transfer applications, which has caused considerable prejudice to the petitioners and therefore the amendment made to Rule 25 of the Special Rules by virtue of the said Government Order should be held to be illegal.

3. Learned counsel appearing for the respondents contended that the post of Sub-Inspector of Police and Reserve Sub-Inspector of Police were brought within the purview of the Tamil Nadu Public Service Commission; they selected candidates for appointment to the said posts in the years 1976 and 1979; the seniority of the candidate was fixed with reference to Rule 35(a) of the General Rules for the Tamil Nadu State & Subordinate Services; Tamil Nadu Public Service Commission addressed the Government to amend Rule 25 of the Special Rules for the Tamil Nadu Police Subordinate Service for introducing a provision in regard to fixation of seniority on the basis of Rule 35(a) of the General Rules for the Tamil Nadu State and Subordinate Services with retrospective effect from 1.9.1976; Government issued G.O.Ms.No.767 Home (Pol.III) dated 28.03.1985 to amend Rule 25 of the Special Rules; on the basis of the said Government Order, a "C" list was prepared revising the seniority as per the second proviso to Rule 25 of the Special Rules; on that basis, ranks were assigned to the petitioners.

4. We have perused the entire materials available on record. Rule 25 of the Special Rules for Tamil Nadu Police Subordinate Service reads as follows:

> "The seniority of a person in any class or category of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Appointing Authority, subject to the Rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority unless he has been appointed temporarily under Sub-Rule (d) of Rule 10 or Sub-rule (b) of Rule 15 as the case may be.

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Provided that, in the case of Sub-Inspectors (recruited direct) (Category 2 of class 1), the seniority shall be fixed on the basis of the marks obtained by them in the final examination in the Police Training College, Vellore."

This proviso is in existence from it's inception i.e., from 25.08.1965 and on the basis of the said provisio, two recruitments were made by the Service Commission in the years 1976 and 1979. As per 35(a) of the Tamil Nadu State and Subordinate Service Rules, the seniority of a person in a service class or category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authority, as the case may be, subject to rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty, irrespective of his seniority.

5. From a perusal of Rule 25 of the Special Rules, it is seen that the seniority of a person shall be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority. The proviso to section 25 also shows that the seniority shall be fixed on the basis of the marks obtained by them in the final examination in the Police Training College, Vellore. When Rule 25 of the Special Rules itself is very clear as to the selection of candidates and fixation of their seniority, then, we fail to understand as to why the Tamil Nadu Public Service Commission addressed the Government to introduce a new provision and that too, for amending the Special Rules with retrospective effect i.e., from 01.09.1976 onwards. When the Tamil Nadu Public Service Commission addressed the Government to introduce a proviso to the Special Rule with retrospective effect, it would have definitely known that by introducing a new proviso, the seniority of the candidates already recruited would get affected. Even assuming for a moment without admitting that the Tamil Nadu Public Service Commission had not committed any error in addressing the Government to introduce a proviso in the Special Rules with regard to fixation of seniority, even then, a duty is cast upon the Government to go deep into this aspect to find out whether the proposed amendment will have any impact on the candidates already recruited by the Tamil Nadu Public Service Commission, especially when the Rule formulated in the year 1965 is very clear and that Rule had been followed by the Tamil Nadu Public Service Commission for selecting candidates in the year 1976 and 1979.

6. It is an admitted fact that after the selection of the petitioners, their seniority was correctly fixed as per the Rule existing then. But, subsequently, the same was altered based on the proviso introduced to Rule 25 by virtue of G.O.Ms.No.767 Home (Pol.III) Department dated 28.03.1985, which has given retrospective effect to the amendment. It is the common knowledge of everybody that any executive

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order like the one in question viz. G.O.Ms.No.767, dated 28.3.1985 will operate only prospectively and since by the said G.O., the proviso to Rule 25 was inserted with retrospective effect, thus affecting the already fixed seniority conferred and enjoyed by the petitioners all these years, it should be held void. It is not the case of the officials that the original seniority of the petitioners itself was wrongly fixed and the same was corrected by the subsequent orders. When the original seniority was fixed legally and correctly as per the Rule existing on the date of the appointment of the petitioners, the same should not have been changed or altered, by way of a subsequent amendment to the Rule, giving retrospective effect to the same, particularly to the detriment of the already conferred seniority of the employees, like the petitioners.

7. In addition to that, the petitioners should have been given an opportunity to know why their seniority, which was settled even in the year 1977, should be re-fixed pursuant to the amendment made by virtue of G.O.Ms.No.767 Home (Pol.III) Department dated 28.03.1985 and their objection, if any, should have been considered. Instead of doing that, their seniority has been re-fixed after a period of nearly 9 years without any basis and a "C" list has been prepared by bringing down their seniority. This is against principles of natural justice and the impugned action of the respondents has caused considerable prejudice to the petitioners. The Tribunal, without considering the facts and circumstances of the cases in their proper perspective has arrived at an erroneous conclusion to dismiss the Applications filed by the petitioners, necessitating this Court to cause its interference into such an erroneous decision of the Tribunal. Therefore, both these writ petitions are allowed, setting aside the common order passed by the Tribunal. No costs.

vsl/Rao

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Commissioner &
Secretary to Government of Tamil Nadu,
Home Department
Madras - 9
2.The Secretary,
Tamil Nadu Public Service Commission
Government Estate
Madras - 2
3.The Inspector General of Police
Madras - 4

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4.The Commissioner of Police
Madras - 8
5.The Director General of Police
Mylapore
Madras - 4
+, One cc to Mr. M. Sriram, Advocate sR 56291

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Common order in W.P.Nos.38792 and 38793 of 2003

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